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CORPORATE INTELLECTUAL PROPERTY  
ONE HEALTH PLAZA 104/3  
EAST HANOVER NJ 07936-1080

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**JUL 03 2007**

**OFFICE OF PETITIONS**

In re Patent No. 7,220,774 :  
Albert et al. :  
Issue Date: May 22, 2007 : LETTER REGARDING  
Application No. 10/660,442 : PATENT TERM ADJUSTMENT  
Filed: September 11, 2003 :  
Atty Docket No. 31625B :

This is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" filed January 3, 2007, notifying the Office of an error in Applicants' favor in the initial determination of patent term adjustment under 35 U.S.C. § 154(b). Applicants note that the correct initial patent term adjustment indicated in the Notice of Allowance should be zero (0) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is **ZERO (0)** days.

Prior to a decision being rendered, the application matured into a patent with a revised patent term adjustment of ninety-eight (98) days. For the reasons stated herein, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **EIGHTEEN (18)** days.

On November 24, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 104 days. Applicants disclose that the Office failed to enter a period of reduction, pursuant to 37 CFR 1.704(c)(7), of 115 days associated with the filing of an

amendment on November 28, 2005 to correct an omission in an amendment filed August 5, 2005.

Applicants are correct. Pursuant to § 1.704(c)(7), a period of reduction of 115 days has been entered.

Furthermore, a review of the record reveals that a period of reduction, pursuant to 37 CFR 1.704(c)(10), of 23 days should have been entered in association with the filing of a petition to correct inventorship on February 7, 2007. This petition was filed after the mailing of the Notice of Allowance. The Office responded with a decision on March 1, 2007. Accordingly, the period of reduction is 23 days (beginning on February 7, 2007 and ending on March 1, 2007).

However, a review of the record also reveals that a period of reduction of 58 days was entered in association with the filing on January 3, 2007 of this candor letter. This reduction is improper. As stated in § 1.704(e):

Submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 0 days (201 days of Office delay reduced by 212 days of applicant delay).

After the mailing of the notice of allowance, an additional period of adjustment of 52 days accrued for the Office taking in excess of 3 years to issue the patent. Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional

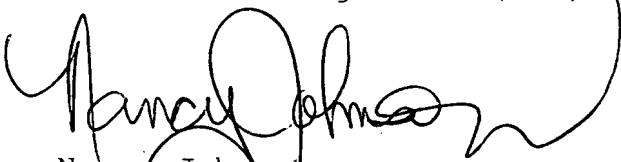
patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the patent issued 3 years and 253 days after the filing date. However, 201 days overlapped so an additional period of 52 days, not 253 days, was entered.

Given the additional period of reduction of 23 days, discussed above, the patent should have issued with a revised patent term adjustment of 18 days  $(201 + 52) - (212 + 23)$ .

As this letter was submitted to advise the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eighteen (18)** days.

Telephone inquiries specific to this letter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,220,774 B2  
DATED : May 22, 2007  
INVENTOR(S) : Albert et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (98) days

Delete the phrase "by 98" and insert – by 18 days--

Day : Friday  
Date: 6/29/2007

# PALM INTRANET

Time: 10:44:23

## PTA Calculations for Application: 10/660442

Application Filing Date:	09/11/2003	PTO Delay (PTO):	253
Issue Date of Patent:	05/22/2007	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	155
Post-Issue Petitions:	0	Total PTA (days):	18
PTO Delay Adjustment:	-80		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
63	06/29/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	58		
62	06/29/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		23	
61	06/29/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		115	
57.5	05/02/2007	PTA 36 MONTHS	52		
57	05/22/2007	PATENT ISSUE DATE USED IN PTA CALCULATION			
56	04/17/2007	EXPORT TO FINAL DATA CAPTURE			
55	04/16/2007	DISPATCH TO FDC			
54	03/27/2007	APPLICATION IS CONSIDERED READY FOR ISSUE			
53	03/27/2007	WORKFLOW - SIGNATORY REVIEW - FINISH			
52	02/07/2007	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
51	03/01/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
50	02/07/2007	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
49	02/28/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
48	02/07/2007	PUBS CASE REMAND TO TC			
47	02/21/2007	FINISHED INITIAL DATA CAPTURE			
46	02/16/2007	ISSUE FEE PAYMENT VERIFIED			
45	02/16/2007	ISSUE FEE PAYMENT RECEIVED			
44	01/03/2007	MISCELLANEOUS INCOMING LETTER		58	51
43	12/01/2006	EXPORT TO INITIAL DATA CAPTURE			
42	11/24/2006	MAIL NOTICE OF ALLOWANCE			
41	11/24/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			

40	11/24/2006	MAIL EXAMINER'S AMENDMENT			
39	11/21/2006	WORKFLOW - SIGNATORY REVIEW - BEGIN			
38	11/21/2006	ISSUE REVISION COMPLETED			
37	11/21/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
36	11/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
35	11/21/2006	EXAMINER'S AMENDMENT COMMUNICATION			
34	11/21/2006	NOTICE OF ALLOWABILITY			
33	11/16/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
32	09/14/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	09/14/2006	REFERENCE CAPTURE ON IDS			
30	09/14/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	28
29	09/21/2006	DATE FORWARDED TO EXAMINER			
28	09/14/2006	RESPONSE AFTER NON-FINAL ACTION		97	26
27	09/14/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	03/09/2006	MAIL NON-FINAL REJECTION			
25	03/06/2006	NON-FINAL REJECTION			
24	10/23/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
23	12/19/2005	DATE FORWARDED TO EXAMINER			
22	11/28/2005	RESPONSE AFTER NON-FINAL ACTION			
21	10/25/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
20	10/24/2005	MISCELLANEOUS ACTION WITH SSP			
19	08/15/2005	DATE FORWARDED TO EXAMINER			
18	08/05/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
17	08/05/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
16	05/31/2005	MAIL RESTRICTION REQUIREMENT	201		-1
15	05/26/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
14	08/10/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	10/23/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	09/11/2003	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			

11	09/11/2003	PRELIMINARY AMENDMENT			
10	08/10/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	12/05/2003	APPLICATION RETURN FROM OIPE			
8	12/05/2003	APPLICATION RETURN TO OIPE			
7	12/05/2003	APPLICATION IS NOW COMPLETE			
6	12/04/2003	APPLICATION DISPATCHED FROM OIPE			
5	12/04/2003	APPLICATION IS NOW COMPLETE			
4	11/24/2003	CASE CLASSIFIED BY OIPE			
3	11/24/2003	CLEARED BY OIPE CSR			
2	11/04/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/11/2003	INITIAL EXAM TEAM NN			

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**EXPLANATION OF PTA CALCULATION**

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